

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 KIMBERLY D.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

Case No. C19-728-MLP

ORDER

13  
14 **I. INTRODUCTION**

15 Plaintiff seeks review of the denial of her application for Disability Insurance Benefits.  
16 Plaintiff contends the administrative law judge (“ALJ”) erred by finding at step four that she  
17 could perform her past work and by discounting her subjective statements. (Dkt. # 10 at 1.) As  
18 discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the  
19 matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

20 **II. BACKGROUND**

21 Plaintiff was born in 1961, has a high school diploma, and has worked as an electronics  
22 factory assembler and operator. AR at 185, 193, 211. Plaintiff was last gainfully employed in  
23 2014. *Id.* at 193, 211.

1 In October 2015, Plaintiff applied for benefits, alleging disability as of November 7,  
2 2014. AR at 164-65. Plaintiff's application was denied initially and on reconsideration, and  
3 Plaintiff requested a hearing. *Id.* at 91-97, 99-105. After the ALJ conducted a hearing on  
4 September 27, 2017 (*id.* at 32-65), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at  
5 15-27.

6 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

7 Step one: Plaintiff has not engaged in substantial gainful activity since the alleged onset  
8 date.

9 Step two: Plaintiff's degenerative disc disease and chronic pain are severe impairments.

10 Step three: These impairments do not meet or equal the requirements of a listed  
impairment.<sup>2</sup>

11 Residual Functional Capacity: Plaintiff can perform light work with additional  
12 limitations: she can lift/carry up to 20 pounds occasionally and up to 10 pounds  
13 frequently. She must work in a job where some of the work is performed at a workstation  
14 or desk, but the job also includes some duties that would involve getting up to go get  
15 tools or files or give something to someone so that she could limit her standing/walking  
16 to approximately four hours and could sit for approximately six hours out of an eight-  
hour work day (with normal breaks). She can occasionally climb ramps or stairs, balance,  
stoop, kneel, and crouch. She can never climb ladders, ropes, or scaffolds, or crawl. She  
can frequently reach overhead. She must avoid concentrated exposure to excessive  
vibration and workplace hazards such as working with dangerous machinery and at  
unprotected heights.

17 Step four: Plaintiff can perform past relevant work, and is therefore not disabled.

18 AR at 15-27.

19 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the  
20 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the  
21 Commissioner to this Court. (Dkt. # 10.)  
22  
23

---

<sup>1</sup> 20 C.F.R. § 404.1520.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

[illegible]

“Substantial evidence” is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

8  
9  
20  
21  
22  
23

19  
20  
21  
22  
23

20  
21  
22  
23

1 the ALJ did not err in finding that Plaintiff could perform her past work as an electronics  
2 inspector. (Dkt. # 11 at 7.) For the following reasons, the Court finds that the ALJ did err in  
3 finding that Plaintiff could perform her past work as an electronics inspector because the ALJ  
4 failed to make any findings supported by substantial evidence establishing that this job meets the  
5 regulatory definition of past relevant work.

6                   1.       *Legal Standards*

7           Plaintiff bears the burden at step four of demonstrating that she can no longer perform her  
8 past relevant work. 20 C.F.R. §§ 404.1512(a), 404.1520(f); *Barnhart v. Thomas*, 540 U.S. 20, 25  
9 (2003). Past relevant work is work generally (1) performed within the past fifteen years, (2)  
10 constituting SGA, and (3) lasting long enough for the individual to have learned how to perform  
11 the work. *See* 20 C.F.R. §§ 404.1560(b)(1), 404.1565(a).

12                   2.       *Recency*

13           Plaintiff argues that the ALJ erred in considering her prior job as an electronics inspector  
14 as “past relevant work” because it was not performed within 15 years of the ALJ’s decision.  
15 (Dkt. # 10 at 5-6.) The ALJ’s written decision finds that Plaintiff performed the electronics  
16 inspector job from 2001 through 2014, but the Commissioner acknowledges that she actually  
17 performed this job from 1994 to 2001. (Dkt. # 11 at 6.) The Commissioner contends that  
18 Plaintiff’s hearing testimony about similarities between the job she performed in 1994-2001 and  
19 the other jobs she performed more recently for the same corporation indicate that there was a  
20 “continuity of skills, knowledge, and processes” between the electronics inspector job and her  
21 more recent jobs, which were recent enough to constitute past relevant work. (*Id.* (quoting Social  
22 Security Ruling 82-62, 1982 WL 31386 at \*2 (Jan. 1, 1982)).)

1 It is possible that Plaintiff's past jobs contain such a continuity that her electronics  
2 inspector job could be found to meet the regulatory definition of past relevant work, but the  
3 ALJ's decision contains no such finding and instead erroneously indicates that Plaintiff worked  
4 as an electronics inspector from 2001-2014, and thus does not address the recency issue at all.  
5 AR at 26. Remand is necessary for the ALJ to consider the recency question in the first instance.

6 **B. The ALJ Erred in Discounting Plaintiff's Subjective Testimony**

7 The ALJ discounted Plaintiff's testimony because her activities were inconsistent with  
8 her allegations, and because the medical evidence did not corroborate Plaintiff's allegation of  
9 disability. AR at 24-25. Plaintiff argues that the ALJ's reasons were not clear and convincing, as  
10 required in the Ninth Circuit. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

11 Plaintiff contends that in finding her activities to be inconsistent with her allegations, the  
12 ALJ did not explain how any of the cited activities actually contradicted any particular  
13 allegation. (Dkt. # 12 at 7.) That is generally true of the ALJ's findings, because most of the  
14 activities described by the ALJ are not inherently inconsistent with the evidence cited by the  
15 ALJ, with two exceptions: Plaintiff's use of an assistive device when walking, and her allegation  
16 of decreased strength. AR at 25-26. The ALJ noted that Plaintiff testified she required the use of  
17 an assistive device when walking (*id.* at 24), and the ALJ found that testimony to be inconsistent  
18 with the record, but most of the evidence cited by the ALJ corroborates rather than contradicts  
19 that testimony. *Id.* at 25 (citing *id.* at 368-81, 387-98, 399-402, 406, 429-39, 444-530). The ALJ  
20 also noted that Plaintiff testified that she experienced decreased strength (*id.* at 24 (referencing  
21 *id.* at 47)), but cited records showing full extremity strength upon examination. *Id.* at 25 (citing  
22 *id.* at 368-81, 387-98, 399-402, 406, 429-39, 444-530). Plaintiff testified that her back problems  
23 caused weakness down the left side of her leg when sitting or walking (*id.* at 46), and this type of

1 weakness would not necessarily be measured by testing extremity strength in isolation; the ALJ  
2 did not cite substantial evidence contradicting Plaintiff's testimony of weakness when walking or  
3 sitting. Thus, the ALJ's findings regarding activities do not demonstrate inconsistencies between  
4 Plaintiff's allegations and activities, and thus do not constitute a clear and convincing reason to  
5 discount Plaintiff's testimony. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (activities  
6 may undermine credibility where they (1) contradict the claimant's testimony or (2) "meet the  
7 threshold for transferable work skills").

8 The ALJ's remaining reason to discount Plaintiff's subjective testimony — lack of  
9 corroboration in the medical evidence — is not sufficient to solely support the ALJ's  
10 determination. *See, e.g., Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986) ("[I]t is improper  
11 as a matter of law for an ALJ to discredit excess pain testimony solely on the ground that it is not  
12 fully corroborated by objective medical findings."). Thus, because the ALJ failed to provide  
13 sufficient reasons to discount Plaintiff's testimony, her testimony must be reassessed on remand.

#### 14 V. CONCLUSION

15 For the foregoing reasons, the Commissioner's final decision is REVERSED and this  
16 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §  
17 405(g). On remand, the ALJ should reconsider the step-four findings, Plaintiff's testimony, and  
18 any other portion of the decision as necessary.

19 Dated this 19th day of November, 2019.

21 

22 MICHELLE L. PETERSON  
23 United States Magistrate Judge